

**USE TAX ACT (EXCERPT)**  
**Act 94 of 1937**

**205.94d Exemptions; food or drink from vending machines; definitions.**

Sec. 4d. (1) The following are exempt from the tax under this act:

(a) Sales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption. As used in this subdivision, "over-the-counter drug" means a drug that is labeled in accordance with the format and content requirements required for labeling over-the-counter drugs under 21 CFR 201.66.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased under the federal food stamp program or meals sold by a person exempt from the tax under this act eligible to be purchased under the federal food stamp program.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the Food and Nutrition Service of the United States Department of Agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(e) Live animals purchased with the intent to be slaughtered for human consumption.

(2) Food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act after December 31, 1994 based on 1 of the following as determined by the taxpayer:

(a) Actual gross proceeds from sales at retail.

(b) Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(3) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(4) "Prepared food" means the following:

(a) Food sold in a heated state or that is heated by the seller.

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(c) Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(5) Prepared food does not include the following:

(a) Food that is only cut, repackaged, or pasteurized by the seller.

(b) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the Food and Drug Administration of the Public Health Service of the Department of Health and Human Services, to prevent foodborne illness.

(c) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(d) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(6) "Prepared food intended for immediate consumption" means prepared food.

**History:** Add. 1974, Act 309, Eff. Jan. 1, 1975;—Am. 1978, Act 276, Imd. Eff. July 3, 1978;—Am. 1987, Act 120, Eff. Oct. 1, 1987;—Am. 1992, Act 267, Imd. Eff. Dec. 14, 1992;—Am. 2000, Act 328, Eff. Oct. 1, 2001;—Am. 2004, Act 172, Eff. Sept. 1, 2004;—Am. 2008, Act 439, Imd. Eff. Jan. 9, 2009;—Am. 2015, Act 172, Imd. Eff. Nov. 3, 2015.